

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 SHANNON O. MURPHY ESQ. SR., DBA
12 SHEETMETAL & ASSOCIATES,

13 Plaintiff,

14 v.

15 AIG CLAIMS, INC.,

16 Defendant.
17

No. 2:20-cv-00301-TLN-AC PS

ORDER

18 Plaintiff is proceeding in this action pro se. Plaintiff has requested authority pursuant to
19 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by
20 Local Rule 302(c)(21).

21 Plaintiff has submitted the affidavit required by § 1915(a) showing that plaintiff is unable
22 to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma
23 pauperis will be granted. 28 U.S.C. § 1915(a).

24 A. Screening Standard

25 The federal in forma pauperis statute authorizes federal courts to dismiss a case if the
26 action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted,
27 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C.
28 § 1915(e)(2).

1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227–28 (9th
3 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
5 490 U.S. at 327.

6 In order to avoid dismissal for failure to state a claim a complaint must contain more than
7 “naked assertions,” “labels and conclusions,” or “a formulaic recitation of the elements of a cause
8 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555–57 (2007). In other words,
9 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
10 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a claim
11 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
12 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
13 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129 S. Ct.
14 at 1949. When considering whether a complaint states a claim upon which relief can be granted,
15 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),
16 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
17 U.S. 232, 236 (1974).

18 B. The Complaint

19 Plaintiff brings this action in federal court alleging diversity jurisdiction pursuant to 28
20 U.S.C. § 1332. ECF No. 1 at 1. Plaintiff alleges neither his own citizenship or defendant’s
21 citizenship. Plaintiff alleges that on May 10, 2017 he received a telephone call from AIG claims
22 regarding an eye injury. Id. at 2. Plaintiff received a settlement offer for \$3,000, which was
23 respectfully declined because it was insufficient to cure the eye injury. Id. Plaintiff references the
24 concept of fraud, noting that the AIG claim was never reduced to a “decision in writing.” Id. at 3.
25 Plaintiff appears to assert a negligence claim, alleging that the failure to provide a written
26 decision was done in order to continue to “torture the AIJ injury claimant.” Id. Plaintiff seeks
27 \$60,000,000 in damages. Id. at 4.

28 ///

1 C. Analysis

2 The undersigned finds the allegations in plaintiff's complaint so vague and conclusory
3 that it is unable to determine whether the current action is frivolous or fails to state a claim for
4 relief. The court has determined that the complaint does not contain a short and plain statement
5 as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading
6 policy, a complaint must give fair notice and state the elements of the claim plainly and
7 succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff
8 must allege with at least some degree of particularity overt acts which defendants engaged in that
9 support plaintiff's claim. Id. Because plaintiff has failed to comply with the requirements of Fed.
10 R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file
11 an amended complaint.

12 If plaintiff chooses to amend the complaint, plaintiff must also set forth the jurisdictional
13 grounds upon which the court's jurisdiction depends. Federal Rule of Civil Procedure 8(a). As
14 pled, it does not appear the court has jurisdiction over plaintiff's claims. If plaintiff is attempting
15 to establish diversity jurisdiction, plaintiff's state citizenship must be diverse from the named
16 defendant. See, e.g., Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 829 (1989)
17 (explaining that "[w]hen a plaintiff sues more than one defendant in a diversity action, the
18 plaintiff must meet the requirements of the diversity statute for *each* defendant or face
19 dismissal").

20 Plaintiff is also informed that he cannot represent his company, Sheetmetal & Associates.
21 The right to represent oneself pro se is personal to the plaintiff and does not extend to other
22 parties. Simon v. Hartford Life, Inc., 546 F.3d 661, 664 (9th Cir. 2008); see also Russell v.
23 United States, 308 F.2d 78, 79 (9th Cir. 1962) ("A litigant appearing in propria persona has no
24 authority to represent anyone other than himself."). To the extent plaintiff is attempting to
25 represent Sheetmetal & Associates, the rules are clear that an entity may appear only by an
26 attorney. See Local Rule 183(a). Unlicensed laypersons, including the owners of companies,
27 officers of a corporation, partners of a partnership, and members of an association may not
28 represent their entities "pro se." Rowland v. Cal. Men's Colony, Unit II Men's Advisory

1 Council, 506 U.S. 194, 201–02 (1993) (“It has been the law for the better part of two centuries . . .
2 that a corporation may appear in the federal courts only through licensed counsel [T]hat rule
3 applies equally to all artificial entities.”); United States v. High Country Broadcasting Co., Inc., 3
4 F.3d 1244, 1245 (9th Cir. 1993). In this regard, “the law is clear that a corporation can be
5 represented only by a licensed attorney.” In re Bigelow, 179 F.3d 1164, 1165 (9th Cir. 1999).
6 Accordingly, plaintiff cannot assert any claim on behalf of Sheetmetal & Associates. If plaintiff
7 chooses to amend his complaint, he is ordered to file it on behalf of himself only as an individual
8 and without the use of “Esq.” after his name, which is consistent with federal rules and this
9 court’s local rules. Further, plaintiff must demonstrate how the conduct complained of has
10 resulted in a deprivation of his rights, not Sheetmetal & Associates’ rights.

11 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
12 make plaintiff’s amended complaint complete. Local Rule 220 requires that an amended
13 complaint be complete in itself without reference to any prior pleading. This is because, as a
14 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
15 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
16 longer serves any function in the case. Therefore, in an amended complaint, as in an
17 original complaint, each claim and the involvement of each defendant must be sufficiently
18 alleged.

19 In accordance with the above, IT IS HEREBY ORDERED that:

- 20 1. Plaintiff’s request to proceed in forma pauperis (ECF No. 2) is granted;
- 21 2. Plaintiff’s complaint (ECF No. 1) is dismissed; and
- 22 3. Plaintiff is granted thirty days from the date of service of this order to file an amended
23 complaint that complies with the requirements of the Federal Rules of Civil Procedure, and the
24 Local Rules of Practice; the amended complaint must bear the docket number assigned this case
25 and must be labeled “Amended Complaint”; plaintiff must file an original and two copies of the


26 ///

27 ///

28 ///

1 amended complaint; failure to file an amended complaint in accordance with this order will result
2 in a recommendation that this action be dismissed.

3 DATED: February 28, 2020

4 
5 ALLISON CLAIRE
6 UNITED STATES MAGISTRATE JUDGE
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28